

FLYNN, DELICH & WISE LLP
ATTORNEYS AT LAW
ONE CALIFORNIA STREET, SUITE 350
SAN FRANCISCO, CALIFORNIA 94111
(415) 693-5566

CONTE C. CICALA (173554)
FLYNN, DELICH & WISE LLP
One California Street, Suite 350
San Francisco, CA 94111
Telephone: (415) 693-5566
Facsimile: (415) 693-0410
Email: contec@fdw-law.com

Attorneys for Plaintiffs
HENDERSON LINE LIMITED; EXEL
TRANSPORTATION SERVICES INC.;
EXEL GLOBAL LOGISTICS INC.

UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

HENDERSON LINE LIMITED, EXEL) Case No.: C06-2641 MMC
TRANSPORTATION SERVICES INC. and)
EXEL GLOBAL LOGISTICS INC.)

Plaintiffs,

vs.

CERTAIN MARITIME CARGO FORMERLY)
TRANSPORTED IN TWO MARINE)
SHIPPING CONTAINERS NUMBERED)
YMLU4890420 AND TEXU3615179, in)
rem,)

Defendant.

**~~[PROPOSED]~~ ORDER GRANTING EX
PARTE APPLICATION FOR
ENTRY OF DEFAULT, DEFAULT
JUDGMENT AND ORDER FOR SALE
OF CARGO IN REM**

The *ex parte* application of plaintiffs, HENDERSON LINE
LIMITED, EXEL TRANSPORTATION SERVICES INC. and EXEL GLOBAL
LOGISTICS INC. (collectively, "EXEL") for entry of default,
default judgment and order for sale of cargo came regularly
before this Court on _____ 2006.

[PROPOSED] ORDER GRANTING EX PARTE APPLICATION FOR ENTRY OF DEFAULT, DEFAULT
JUDGMENT AND ORDER FOR SALE OF CARGO IN REM
Case No. C06-2641 MMC

Based upon the pleadings and papers on file herein, and the entire record of this action, it appears that proper service was duly made upon the Subject Cargo, and notice of the arrest of the Subject Cargo was duly given. No answer or other appearance nor verified statement of right or interest in the SUBJECT CARGO under Supplemental Rule C of the Federal Rules of Civil Procedure was filed in this action.

Therefore, for good cause appearing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The *Ex Parte* Application for Entry of Default, Default Judgment and Order for Sale of the Subject Cargo *In Rem* is hereby granted.

2. Default of the SUBJECT CARGO *in rem* is hereby entered with respect to EXEL's Verified Complaint *In Rem* for the Arrest of Certain Maritime Cargo Transported in Two Marine Shipping Containers Numbered YMLU4890420 and TEXU3615179 and Money Judgment Against the Maritime Cargo filed April 19, 2006 in this Court (the "Complaint").

3. Judgment is hereby entered in favor of EXEL and against the defendant SUBJECT CARGO on the Complaint.

4. EXEL is the holder of a valid maritime lien on the SUBJECT CARGO for freight and related charges. A carrier's lien may be extended by a "general lien" clause in ocean bills of lading to all freights and charges due, whether on the Subject Cargo or otherwise. *Maersk-Sealand v. Eurocargo Express, LLC*, 2004 A.M.C. 1098, 2004 WL 1950372 (C.D. Cal. 2004). Here, the Subject Cargo was shipped under two bills of lading, each of which contained a valid general lien clause.

5. The shipper and consignee of the SUBJECT CARGO are subject to and bound by the terms of the bills of lading covering the SUBJECT CARGO.

6. The shipper and consignee of the SUBJECT CARGO have failed to pay freight and other charges owing respecting the SUBJECT CARGO and other shipments handled by EXEL.

7. As of April 27, 2006 the following amounts were due, owing and unpaid to EXEL under the bills of lading, apart from costs and fees associated with the arrest of the SUBJECT CARGO, and are awarded as part of this Judgment: \$459,989.01.

8. EXEL also has incurred and will continue to incur expenses related to this action, including fees and costs of the U.S. Marshal, fees for keeping the SUBJECT CARGO, advertising and publication expenses related to the arrest and sale. These amounts include expenses totaling \$7,071.10, and such other amounts as are shown according to proof in accordance with paragraph 14 below. All such expenses shall be deemed administrative expenses of the action and are awarded as part of this Judgment.

9. EXEL is hereby granted judgment *in rem* against the SUBJECT CARGO (i) for \$459,989.01 for principal, (ii) for administrative expenses, including Marshal's fees and expenses, and fees for keeping the Subject Cargo under arrest, of \$7,071.10, plus such other expenses of *custodia legis* incurred or to be incurred until the SUBJECT CARGO is sold and released from arrest.

10. EXEL may apply *ex parte* to amend this Judgment to include additional fees and costs and administrative expenses,

FLYNN, DELICH & WISE LLP
 ATTORNEYS AT LAW
 ONE CALIFORNIA STREET, SUITE 350
 SAN FRANCISCO, CALIFORNIA 94111
 (415) 693-5566

and interest, not later than thirty (30) days after EXEL's receipt of the latter of (i) the U.S. Marshal's final statement of account for services and disbursements, or (ii) EXEL's receipt of its final invoice from its attorneys, which shall be no later than thirty (30) days after (i) above.

11. EXEL may apply *ex parte* to amend this Judgment after completion of the sale of the SUBJECT CARGO to reduce the amount of the Judgment by the amount of any credit bid made by EXEL or sales proceeds received by EXEL related to the foreclosure sale of the SUBJECT CARGO.

12. EXEL is awarded interest on each of the amounts entered herein, and the amounts entered in any amended judgment, from the date of entry of judgment until paid, as provided by 28 U.S.C. § 1961.

13. The SUBJECT CARGO shall be sold substantially in accordance with the Order for Sale of Subject Cargo issued concurrently herewith.

14. EXEL shall have the right to bid on and purchase the Subject Cargo.

15. Nothing in this Order will extinguish EXEL's *in personam* rights with respect to any unpaid freight and charges that may remain at the conclusion of this action *in rem*.

DATED: June 12, 2006


 United States District Judge